

One Hundred Third Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the fifth day of January, one thousand nine hundred and ninety-three*

An Act

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Cooperative Production Amendments of 1993”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) technological innovation and its profitable commercialization are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

(2) cooperative arrangements among nonaffiliated businesses in the private sector are often essential for successful technological innovation; and

(3) the antitrust laws may have been mistakenly perceived to inhibit procompetitive cooperative innovation arrangements, and so clarification serves a useful purpose in helping to promote such arrangements.

(b) PURPOSE.—It is the purpose of this Act to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which businesses may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damages limitation on civil antitrust liability.

SEC. 3. AMENDMENTS.

(a) SHORT TITLE.—Section 1 of the National Cooperative Research Act of 1984 (15 U.S.C. 4301 note) is amended by striking “National Cooperative Research Act of 1984” and inserting “National Cooperative Research and Production Act of 1993”.

(b) DEFINITION.—Section 2(a)(6) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6)) is amended—

(1) in the matter preceding subparagraph (A) by striking “research and development”;

(2) in subparagraph (D) by inserting “or production” after “research”;

(3) in subparagraph (E) by striking “and (D)” and inserting “(D), (E), and (F)”;

(4) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively;

(5) by inserting after subparagraph (C) the following:

“(D) the production of a product, process, or service,

“(E) the testing in connection with the production of a product, process, or service by such venture,”; and

(6) by striking “research” the last place it appears and inserting “such venture”.

(c) EXCLUSIONS.—Section 2(b) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(b)) is amended—

(1) in the matter preceding paragraph (1) by striking “research and development”;

(2) in paragraph (1) by striking “that is not reasonably required to conduct the research and development that is” and inserting “if such information is not reasonably required to carry out”;

(3) by amending paragraph (2) to read as follows:

“(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such venture of any product, process, or service, other than—

“(A) the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture,

“(B) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed under a written agreement entered into before the date of the enactment of the National Cooperative Production Amendments of 1993, or

“(C) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed under a written agreement entered into on or after the date of the enactment of the National Cooperative Production Amendments of 1993,”;

(4) in paragraph (3)—

(A) in subparagraph (A) by striking “or developments not developed through” and inserting “, developments, products, processes, or services not developed through, or produced by,”;

(B) in subparagraph (B) by striking “such party” and inserting “any person who is a party to such venture”; and

(C) by striking the period at the end and inserting a comma; and

(5) by adding at the end the following:

“(4) entering into any agreement or engaging in any other conduct allocating a market with a competitor,

“(5) exchanging information among competitors relating to production (other than production by such venture) of a product, process, or service if such information is not reasonably required to carry out the purpose of such venture,

“(6) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production (other than the production by such venture) of a product, process, or service,

“(7) using existing facilities for the production of a product, process, or service by such venture unless such use involves the production of a new product or technology, and

“(8) except as provided in paragraphs (2), (3), and (6), entering into any agreement or engaging in any other conduct to restrict or require participation by any person who is a party to such venture, in any unilateral or joint activity that is not reasonably required to carry out the purpose of such venture.”.

(d) RULE OF REASON STANDARD.—Section 3 of the National Cooperative Research Act of 1984 (15 U.S.C. 4302) is amended—

(1) by striking “research and development” the first place it appears;

(2) by striking “and development” the last place it appears and inserting “, development, product, process, and service”; and

(3) by adding at the end the following:

“For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.”.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended—

(1) in section 4—

(A) in subsections (a)(1), (b)(1), (c)(1), and (e) by striking “research and development” each place it appears;

(B) in subsections (a), (b), and (c) by inserting “of this section” after “subsection (d)” each place it appears; and

(C) in subsection (e) by striking “the effective date of this Act” and inserting “October 11, 1984,”; and

(2) in section 5(a) in the matter preceding paragraph (1) by striking “research and development”.

(f) DISCLOSURE.—Section 6 of the National Cooperative Research Act of 1984 (15 U.S.C. 4305) is amended—

(1) in the heading by striking “RESEARCH AND DEVELOPMENT”;

(2) in subsection (a)—

(A) by striking “the date of the enactment of this Act” and inserting “October 11, 1984”;

(B) in paragraph (1) by striking “and” at the end;

(C) in paragraph (2) by striking the period at the end and inserting “, and”; and

(D) by inserting the following after paragraph (2):

“(3) if a purpose of such venture is the production of a product, process, or service, as referred to in section 2(a)(6)(D), the identity and nationality of any person who is a party to such venture, or who controls any party to such venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.”; and

(3) in subsections (a), (d)(2), and (e) by striking “research and development” each place it appears.

(g) LIMITATION.—The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended by adding at the end the following:

H. R. 1313—4

“APPLICATION OF SECTION 4 PROTECTIONS TO PRODUCTION OF
PRODUCTS, PROCESSES, AND SERVICES

“SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture’s production of a product, process, or service, as referred to in section 2(a)(6)(D), unless—

“(1) the principal facilities for such production are located in the United States or its territories, and

“(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country whose law accords antitrust treatment no less favorable to United States persons than to such country’s domestic persons with respect to participation in joint ventures for production.”.

SEC. 4. REPORTS ON JOINT VENTURES AND UNITED STATES COMPETITIVENESS.

(a) **PURPOSE.**—The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 on the competitiveness of the United States in key technological areas of research, development, and production.

(b) **ANNUAL REPORT BY THE ATTORNEY GENERAL.**—In the 30-day period beginning at each 1-year interval in the 6-year period beginning on the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

(1) a list of joint ventures for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the 12-month period for which such report is made, including—

(A) the purpose of each joint venture;

(B) the identity of each party described in section 6(a)(1) of such Act; and

(C) the identity and nationality of each person described in section 6(a)(3) of such Act; and

(2) a list of cases and proceedings, if any, brought during such period under the antitrust laws by the Department of Justice, and by the Federal Trade Commission, with respect to joint ventures for which notice was filed under such section at any time.

(c) **TRIENNIAL REPORT BY THE ATTORNEY GENERAL.**—In the 30-day period beginning at each 3-year interval in the 6-year period beginning on the date of the enactment of this Act, the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a description of the technological areas most commonly pursued by joint ventures for production for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the 3-year period for which such report is made, and an analysis of the trends in the competitiveness of United States industry in such areas.

(d) **REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.**—In the three 30-day periods beginning 1 year, 3 years, and 6 years

H. R. 1313—5

after the date of the enactment of this Act, the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses with respect to participation in joint ventures for production, under the law of each foreign nation any of whose domestic businesses disclosed its nationality under section 6(a)(3) of the National Cooperative Research and Production Act of 1993 at any time.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*